

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1867 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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VALIBHAI AMADABHAI PATEL

Versus

SIDDIQBHAI IBRAHIMBHAI BENI  
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Appearance:

MR JV JAPPEE for Petitioner  
MR RN SHAH for Respondent No. 1  
RULE SERVED for Respondent No. 2  
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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 31/08/2000

ORAL JUDGEMENT

1. This Revision Application has been filed against the order dated 30th November, 1999 passed by the Civil Judge (S.D.), Himatnagar on Application, Exh.67, for

making amendment in the plaint in the Special Civil Suit No. 33 of 1999. One Banakhat was executed on 31st March, 1998 and the plaintiff filed suit for specific performance of the contract and sought for a declaration and permanent injunction against the defendants. The plaintiff also filed an application for temporary injunction.

2. During the pendency of the suit, the plaintiff filed an application, Exh.67, for amendment stating that sellers of the disputed lands are residing in Village-Kesharpura while the disputed Survey Nos. are situated in Village-Deshotar. The residence of the defendants and the place of disputed Survey Nos. are adjoining to each other. Due to typing error, the survey nos. are lying in Village-Kesharpura, though in fact, they lie within Village-Deshotar. Hence, this application was made for amendment in the plaint. Defendant nos.2 and 3 filed reply and confirmed that they have no objection if the amendment is allowed. The Court below came to the conclusion that the amendment regarding the village in the plaint is other than which is mentioned in the Banakhat. Hence, the amendment sought cannot be allowed and the application, Exh.67, has been rejected.

3. The learned counsel for the petitioner submitted that the disputed survey nos. and the place of residence of the defendants are adjoining though they lie in different village. Due to inadvertence, it has been wrongly mentioned in the plaint that the disputed Survey Nos. are lying in the village-Kesharpura though, in fact, they are lying within Village-Deshotar. Due to inadvertence, this mistake has been committed in the plaint, hence, it is required to be amended. Defendants nos.2 and 3 have admitted that they have no objection if the amendment is allowed and the disputed Survey Nos. are situated in Village-Deshotar, while on the other hand, the learned counsel for the respondents contended that W.S. on behalf of defendants nos. 1 and 4 was filed wherein execution of Banakhat has been denied and the description of the survey nos. mentioned therein is not the same which is mentioned in the Banakhat and the Banakhat was allegedly to be bogus and false document.

4. It is also disputed in the written statement that the description mentioned in the Banakhat is different one which does not belong to the defendants.

5. I have considered the contentions of the learned

counsel for the parties and perused the relevant papers on record. It appears that this mistake regarding mention of village in the plaint might have been committed due to inadvertence as the residence of the defendants and the disputed survey nos. are adjacent to each other; this fact has been admitted by defendants nos. 2 and 3 vide their written reply, Exh.74, wherein they have stated that they have no objection if the amendment is allowed and other two defendants nos. 1 and 4 have not filed any reply to the application, Exh.67, though the written statement has been filed by them earlier at the relevant time wherein they have denied execution of the document and they stated that the document itself is a bogus document, but, denying of the execution and genuineness of the document can be determined by the Trial Court at the relevant time after examination of the evidence to be led by the parties concerned.

6. It appears that the learned Trial Court has rejected the application only on the ground that amendment in the plaint would amount to change of the description mentioned in the Banakhat which is the base for filing the suit, but, it is a matter to be decided after the examination of the evidence led by the parties. Whether it would amount to change of cause of action or not, that has to be seen at the relevant time. But, the petitioner cannot be denied his right to show that due to some inadvertence, name of the village in the plaint has been wrongly mentioned.

7. In the facts and circumstances of the case, I consider that the Civil Judge (S.D.), Himatnagar has committed an error. He ought to have allowed the application permitting the petitioner to amend the plaint. Accordingly, this application is allowed and the impugned order dated 30th November, 1999 passed by the Civil Judge (S.D.), Himatnagar on application, Exh.67, in Special Civil Suit No.33 of 1999 is hereby quashed and set aside. The Application, Exh.67, stands allowed. The petitioner is directed to carry out the amendment in accordance with law. Rule is made absolute. No order as to costs.

(Kundan Singh, J.)

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